

Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 EA-07 IO-13 ISO-00 SSO-00 NSCE-00
USIE-00 INRE-00 STRE-00 FEA-01 AGRE-00 CEA-01
CIAE-00 COME-00 DODE-00 FRB-03 H-01 INR-07 INT-05
L-03 LAB-04 NSAE-00 NSC-05 PA-01 EPG-02 AID-05
SS-15 STR-04 ITC-01 TRSE-00 PRS-01 SP-02 OMB-01
XMB-02 OPIC-03 OIC-02 /109 W
-----241913Z 025573 /43

O 241800Z MAY 77

FM USMISSION GENEVA

TO SECSTATE WASHDC IMMEDIATE 7630

INFO ALL EC CAPITALS

AMEMBASSY OTTAWA

AMEMBASSY TOKYO IMMEDIATE

USMISSION OECD PARIS

LIMITED OFFICIAL USE SECTION 1 OF 2 GENEVA 4073

EB/OT FOR BARRACLOUGH

PASS STR ELECTRONICALLY

PASS TREASURY

E.O. 11652: N/A

TAGS: ETRD, GATT, JA

SUBJECT: GATT COUNCIL DISCUSSION OF ZENITH CASE

REF: (A) GENEVA 4026 (B) GENEVA 3974

BEGIN SUMMARY. JAPANESE SAID ZENITH CASE AFFECTS BASIC FOUNDATION OF THE GATT AND CONCEIVABLY MTN ITSELF. WORKING PARTY APPROVED AND WILL MEET JUNE 2-3. END SUMMARY.

1. DURING MAY 23 GATT COUNCIL DISCUSSION U.S. ZENITH CASE,
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JAPAN SAID IMPLICATIONS OF COURT DECISION "AFFECT BASIC FOUNDATION OF THE GATT AND CONCEIVABLY MTN ITSELF". SAID JAPANESE PRACTICE IN FULL ACCORD WITH GATT WHILE U.S. COURT DECISION AND SUBSEQUENT U.S. ACTION IS CLEAR CONTRAVENTION OF GATT. IF DECISION IS UPHELD, IT WILL AFFECT LARGE VOLUMES OF IMPORTS FROM MANY CP'S WHO EXEMPT OR REMIT INDIRECT OR SALES TAXES. SAID THERE IS ALSO DANGER OF

PROLIFERATION OF CASES IN U.S. AND ASKED ESTABLISHMENT
OF WORKING PARTY WITHOUT DELAY.

2. JAPANESE SAID THEY AWARE U.S. HAS APPEALED CASE
AND THAT SUSPENSION OF LIQUIDATION IS TEMPORARY, BUT LATTER
ALREADY CAUSING SERIOUS PROBLEMS IN TRADE. SAID 1976
U.S. IMPORTS OF TELEVISIONS, RADIOS, RECORD/TAPE SETS,
AND COMBINATIONS TOTALED 1.89 BILLION DOLLARS; COUNTER-
VAILING DUTIES ON THESE, IF FINALLY RULE, WOULD BE
SEVERE BURDEN. MEANWHILE, ACTION HAS ALREADY CAUSED
UNCERTAINTY AND DISTURBANCE TO TRADE. JAPANESE COM-
PLAINED THAT ELECTRONIC PRODUCTS, ESPECIALLY TV SETS,
BEING SUBJECT TO "HARASSMENT" IN U.S. BY EMPLOYMENT OF
MULTIPLE PROCEDURES: SECTIONS 201 AND 337 OF TRADE
ACTION, ITC ACTIONS (SECTION 603), ANTI-TRUST
ACTION, AND NOW THIS COURT PROCEDURE. DUPLICATION OF
PROCEDURES INVOLVES COSTLY PREPARATION, REQUIRES REVELA-
TION OF MATERIALS NORMALLY REGARDED AS COMMERCIALY
CONFIDENTIAL, AND CONSTITUTES HARASSMENT. SAID
JAPAN DOES NOT INTEND TO PURSUE ALL OF THIS IN WORK-
ING PARTY. JAPAN SAID WITH RESPECT COURT CASE THERE
IS "ALREADY SOME INDICATION OF PROLIFERATION OF CASES
FROM WITHIN U.S.". SAID ARTICLE VI:4 AND NOTE TO
ARTICLE XVI VIOLATED AND INVITED A CLEAR-CUT STATEMENT
OF VIEWS BY CONTRACTING PARTIES, ASSISTED BY A WORKING
PARTY.

3. JAPANESE PROPOSED TERMS OF REFERENCE AS FOLLOWS:
"TO CONSIDER THE DECISION BY THE U.S. CUSTOMS COURT ON
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THE ZENITH VERSUS U.S. CASE AND THE SUBSEQUENT U.S.
ACTION IN THE LIGHT OF GATT ARTICLE VI:4 AND THE NOTE
TO ARTICLE XVI AND TO REPORT EXPEDITIOUSLY TO THE COUN-
CIL." JAPANESE ADDED THAT THEY RESERVED FULLY ALL OF
THEIR RIGHTS UNDER THE GATT.

4. U.S. SAID JAPANESE FACTUAL DESCRIPTION OF THE COURT
DECISION WAS ACCURATE BUT WE DID NOT AGREE WITH RESPECT
TO TRADE EFFECTS AND SOME OF THE CONCLUSIONS ON GATT
CONSISTENCY. U.S. SAID IT IMPORTANT TO NOTE U.S. HAS
NOT IMPOSED COUNTERVAILING DUTIES AND THAT BONDING PRO-
CEDURES NOT A SERIOUS IMPEDIMENT TO TRADE. WE DIS-
AGREED THAT CASE WAS PART OF ANY OVERALL PROGRAM OF
HARASSMENT AND NOTED THAT U.S. ADMINISTRATION APPEALING
THE DECISION. WE SAID WE PREPARED ACCEPT WP TERMS OF
REFERENCE PROPOSED BY JAPAN.

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5. EC EXPRESSED "GRAVE CONCERN", AGREED WITH JAPANESE
CONTENTIONS ON GATT VIOLATIONS, AND SAID THEY CONCERNED
THAT ACTION MIGHT SPREAD TO OTHER PRODUCTS, THEREBY
THREATENING WORLD TRADE AS A WHOLE, IN WHICH CASE U.S.
TRADE PARTNERS COULD NOT REMAIN INACTIVE. EC ADDED THAT
ZENITH IS DOMICILED IN FIVE STATES AND GAINS EXPORT
EXEMPTION FROM SALES TAX IN FOUR OF THOSE. IN ADDI-
TION, ZENITH GETS DISC STATUS, SO THEY HAVE "BEST OF
BOTH WORLDS". EC ALSO RESERVED ALL GATT RIGHTS AND
FELT WP TERMS OF REFERENCE SHOULD INCLUDE "AS
WELL AS ALL OTHER RELEVANT PROVISIONS OF GATT IN THIS
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FIELD."

6. NORDICS SUPPORTED, CANADA EXPRESSED CONCERN AND
"LOOKED FORWARD TO PARTICIPATING IN WP".

7. U.S. SAID WHILE WE PREPARED ACCEPT JAPANESE TERMS
OF REFERENCE, PROPOSED EC ADDITION WOULD RESULT IN A WP
WITH WIDER SCOPE THAN WE AUTHORIZED TO ACCEPT; IN INTER-
EST EXPEDITIOUS ESTABLISHMENT OF WP, WE URGED COUNCIL
STICK TO TERMS PROPOSED BY JAPAN.

8. COUNCIL CHAIRMAN SUGGESTED APPROVAL OF JAPANESE
TERMS OF REFERENCE CITED IN PARA 3 ABOVE WITH UNDER-
STANDING THAT MEMBERS COULD RAISE OTHER MATTERS AS
WELL. U.S. AGREED BUT CAUTIONED THAT TO EXTENT OTHERS
BRING UP OTHER MATTERS, WP PROCEEDINGS COULD BE DELAYED.

9. CHAIRMAN IS AMB. FARNON OF NEW ZEALAND; MEMBERS ARE
AUSTRALIA, BRAZIL, CANADA, EC, INDIA, JAPAN, MALAYSIA,
SWEDEN, SWITZERLAND, UNITED STATES, YUGOSLAVIA.

10. AFTER CONSULTATION WITH OTHER DELEGATIONS AND SECRETARIAT,
U.S. AGREED TO CONVENING WP ON JUNE 2-3.

11. IN LATER CONSULTATIONS WITH EC AND JAPAN, WE
(MISSION OFFICER AND BARDEN OF TREASURY) INDICATED U.S.
COULD ACCEPT UNANIMOUS WP CONCLUSIONS AT END OF JUNE 2-3
SESSION WHICH STATES A COUNTERVAILING DUTY IN THIS CASE
WOULD VIOLATE ARTICLES VI:4 AND XVI. WE EMPHASIZED U.S.
COULD NOT ACCEPT UNANIMOUS CONCLUSION THAT SUSPEN-
SION OF LIQUIDATION WAS A GATT VIOLATION; INDEED PRESSURE
FOR SUCH A CONCLUSION MIGHT WELL DELAY OUR ABILITY TO
PARTICIPATE IN A TIMELY CONCLUSION TO THE WP'S WORK.
EC AND JAPAN GAVE PRELIMINARY INDICATION OF INTENT TO
COOPERATE WITH U.S.-PROPOSED SCENARIO BUT CAUTIONED
THEY WOULD HAVE TO ASSERT THAT SUSPENSION OF
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LIQUIDATION WAS ILLEGAL. WE SAID WE COULD NOT, OF
COURSE, PREVENT SUCH ASSERTIONS BUT U.S. COULD NOT
ACCEPT UNANIMOUS CONCLUSIONS TO THIS EFFECT.

12. COMMENT: THE JAPANESE APPEAR TO BE UNDER STRONG
INSTRUCTIONS TO PURSUE THE QUESTION OF GATT LEGALITY OF
SUSPENSION OF LIQUIDATION. WE HAVE URGED THAT THEY FOCUS
ON EVENTUAL OUTCOME OF THE ZENITH CASE RATHER THAN ON
THIS (HOPEFULLY) MORE TEMPORARY CONSIDERATION. SORENSON

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